

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

David Lane Johnson,

Plaintiff,

-v-

National Football League Players
Association, et al.,

Defendants.

No. 1:17-cv-05131 (RJS)

Judge Richard J. Sullivan

Declaration of David Lane Johnson

I, David Lane Johnson, declare under penalty of perjury the following is true and correct:

1. I am over the age of 18 and have personal knowledge of the facts and circumstances described in this declaration.

2. I publicly questioned the representation the National Football League Players Association (“NFLPA”) provided me, including, but not limited to, stating, “the NFLPA does not stand up for players.” In response, among other things, based on media reports I have read, the NFLPA publically attacked me and made false statements to the media about me.

3. On multiple occasions, through my counsel, I requested copies of the National Football League Policy on Performance-Enhancing Substances 2015 (the “Policy”), including documents that are part of the Policy and amendments, modifications, side letters, deviations, etc. to the Policy. I made these requests before and at the time of the arbitration of my discipline appeal on October 4, 2016. I requested from the NFLPA both any oral and written amendments, modifications, side letters, deviations, etc. to the Policy. In response to one of my many requests

for Policy documents, the NFLPA told me to obtain the requested documents from the National Football League (“NFL”).

4. On October 16, 2018, the NFLPA produced only a portion of the Policy, including some of the agreements made under the Policy. The NFLPA has never produced the entire Policy to me. At a minimum, the NFLPA has not produced to me the following Policy documents: the amendment to the Certified Forensic Toxicologist provisions applicable to the 2015 Policy; the amendment allowing less than the required three to five arbitrators; the amendment regarding the two-year reasonable-cause testing period, including Dr. John Lombardo’s proposed modifications to the Policy, which the parties apparently accepted and agreed to; and the Policy’s Collection Procedures, including, but not limited to, the collection protocols and specimen handling procedures. To the extent any of these amendments were oral, the NFLPA has not produced to me a writing detailing the terms of any oral amendment to the Policy.

5. To date, I have not received a complete copy of the Policy.

6. Prior to October 16, 2018, I never received the letter dated April 22, 2013 and screen shots of player certifications regarding drug testing that the NFLPA produced that day.

7. Absent a complete copy of the Policy, it was impossible for me to evaluate my rights under the Policy. Having a complete copy of the Policy, including all portions deemed part of the Policy under the Labor Management Reporting and Disclosure Act (“LMRDA”), would have helped me evaluate my rights under the Policy, including how best to appeal my discipline.

8. I have expended significant time, money, and resources seeking to enforce my rights under the LMRDA.

9. The NFLPA's treatment of me and retaliation of me has damaged my reputation.

10. The NFLPA's retaliation of me, includes, but is not limited to, the following:

- Refusing to provide me a full explanation/copy of the Policy, including all modifications, side letters, etc., in violation of the LMRDA;
- Colluding with the NFL to sabotage my discipline appeal;
- Refusing to assist me with my discipline appeal; and,
- Refusing to state its support for me at my discipline appeal.

11. Despite my requests for information related to the agreement regarding the application of the Policy's two-year reasonable cause testing period, the NFLPA never shared its knowledge with me. Instead, the NFLPA could not explain how the two-year testing period worked, failed to provide me any information from Dr. Lombardo, and indicated no such agreement existed. Rather, up to my arbitration on October 4, 2016, the NFLPA supported and agreed with my plain reading of the two-year period set forth in the Policy, including that the NFL should not have subjected me to reasonable cause testing at the time of my "positive" test, only to reverse course and state that the NFL and NFLPA had agreed to a different agreement at my arbitration. The NFLPA's statements that no such amendment or alteration to the straightforward language in the Policy existed strengthened my resolve to appeal my discipline. I relied on the NFLPA's false statements to form part of the basis for the appeal of my discipline. It was not until my discipline arbitration that the NFLPA suggested that it knew of this Policy agreement/modification requiring a different reading of the two-year reasonable cause testing period than that set forth in the Policy. To date, the NFLPA has not provided this agreement/modification to me.

12. Prior to my arbitration in October 2016, and prior to the date that I filed the instant lawsuit, the NFLPA never provided me the letter dated May 7, 2015 modifying the "2014 Policy on Performance-Enhancing Substances".

FURTHER DECLARANT SAYETH NAUGHT.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 16, 2019


DAVID LANE JOHNSON